IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO.586 OF 2005

Dr.Vijay Kumar Lulla — Appellant

Vs.

Municipal Corporation of Greater Bombay & anr. — Respondents

Mr.Pradip K. Kadam for appellant.

Ms.Geeta Jogalekar for BMC.

CORAM: B.H.MARLAPALLE,J.
June 14, 2005.

ORAL ORDER:

1. Heard Mr.Kadam, the learned counsel for the appellant and Mrs.Jogalekar for the respondent-Corporation.

2. Notice under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 dated 6-8-2004 came to be served on the petitioner by the Respondent no.1-Corporation calling upon the petitioner to discontinue the unauthorised use of residential flat No.B-103 at first floor of "B" Wing of Andheri Manish Garden Co-op. Housing Society Ltd., Mumbai. By the said notice the appellant was called upon to restore

the use of the subject flat for residential purposes. The said notice came to be challenged by filing L.C. Suit No.1945 of 2005 or or about 25-4-2005 and in the said Suit draft Notice of Motion was taken out praying for ad-interim stay to the notice issued by the Corporation. By the impugned order dated 28-4-2005 the learned Judge of the City Civil Court at Mumbai declined the prayer for ad-interim order and directed the plaintiff to register the Notice of Motion which has been made returnable on 15-7-2005.

3. The trial Court noted that the averments in the plaint itself indicated that the plaintiff was running a polyclinic in the suit premises which was meant for the residents and conversion into a polyclinic was without the requisite permission of the Corporation as noted by the Court. The learned Advocate for the plaintiff referred to the provisions of Rule 51 of the Development Control Regulations and the Court while rejecting the prayer for ad-interim relief referred to the provisions of Section 149 of the MRTP Act as well as it noted that there was no prima facie case made out for granting such a relief at that stage.

4. Rule 51(iii) of the Development Control Regulations for Greater Bombay, 1991 makes it clear that polyclinic in any independent building or independent parts of building on the ground floor, first and second floor with separate means of access stair case from within the building or outside, but not within the prescribed marginal open spaces in any case are allowed to be run in residential premises subject to the special permission of the Commissioner. Whether special permission of the Commissioner was obtained or not is a matter which is required to be satisfied by the plaintiff before the trial Court while hearing the Notice of Motion. The notice was issued in the first week of August 2004 and the plaintiff approached the trial Court towards the end of April 2005. Under such circumstances the trial Court rightly refused the prayer for ad-interim order. The Notice of Motion has been made returnable on 15-7-2005 and it could be heard and decided on its own merits. There is no reason to entertain the appeal at an interlocutory stage right now. Hence the appeal is dismissed in limine but the ad-interim order passed by this Court directing the Corporation not to take any coercive steps is hereby continued till 15-7-2005 and any further relief of such nature

if an occasion arises will be considered by the trial Court on its own merits and without being influenced by his direction.

(B.H.MARLAPALLE,J.)